



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Charles and Joan Alward
PO Box 795
Belmont, NH 03220

Re: Gus' Country Store
916 Laconia Road, Rte 106
Belmont, NH 03220
UST # 0-113314

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-033**

September 27, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Charles and Joan Alward, pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that a fine totaling \$9,500 be imposed against Charles and Joan Alward for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services ("DES"), is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Charles Alward and Joan Alward are individuals having a mailing address of Box 795, Belmont, NH, 03220.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-C authorizes DES to regulate the installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted Env-Wm 1401 to set forth the requirements for underground storage facilities by "establishing criteria for registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of such facilities."
2. RSA 146-C:10-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-C and any rule adopted under the provisions of this chapter. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for violations of RSA 146-C, including any rule adopted under the provisions of this chapter. Administrative fines imposed under this section shall not preclude imposition of further

penalties under this chapter.

3. Charles and Joan Alward are the owners of four underground storage tanks ("the Facility"), further identified as UST #0-113314, located on real property at 916 Laconia Road, Route 106, in Belmont, NH, 03220, further described on Tax Map 122 as Lot No. 058 ("the Property"), and by deed in Book 1421 on Page 506 of the Belknap County Registry of Deeds.
4. RSA 146-C:4 stipulates that "no person shall own or operate an underground storage facility in this state without a permit issued by the division."
5. The Division has not issued a permit-to-operate the Facility to Charles and Joan Alward.
6. RSA-C:4(III) requires that "a permit fee of \$70 per year shall be paid to the division by the owner or operator of each permitted facility."
7. The Division has no record of receipt of a permit fee from Charles and Joan Alward.
8. Pursuant to Env-Wm 1401.07(b), "the owner of an underground storage facility shall apply to the division for a permit to operate."
9. The Division has no record of receipt of an application for a permit-to-operate from Charles and Joan Alward.
8. Pursuant to Env-Wm 1401.07(c), a permit issued under Env-Wm 1401 "shall be displayed in such a way as to be permanently affixed on the facility premises and visible to a Division inspector."
9. On April 14, 2002, a Division inspector conducted a compliance inspection of the Facility. The field inspection revealed that the permit-to-operate is not posted. DES requested in the UST Facility Summary of Deficiencies that Charles and Joan Alward post the permit to operate permanently on the facility premises.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Charles and Joan Alward have violated RSA 146-C:4 by owning or operating a Facility without a permit. For this violation, pursuant to Env-C 607.02(c) the Division is seeking a fine of \$1,000.
2. Charles and Joan Alward have violated RSA 146-C:4, III, by failing to remit a permit fee. For this violation, pursuant to Env-C 607.02(d) the Division is seeking a fine of \$100 per month for 12 months (\$1,200) for failure to pay a permit-to-operate fee as required by RSA 146-C:4. The Division is also seeking a fine of \$1,000 for this violation pursuant to Env-C 607.02(c). The total fine being sought by the Division for this violation is \$2,200.

3. Charles and Joan Alward have violated Env-Wm 1401.07(b) by failing to apply to the Division for a permit-to-operate. For this violation, pursuant to Env-C 607.02(c), the Division is seeking a fine of \$1,000.

4. Charles and Joan Alward have violated 1401.07(c) by failing to display in a visible, permanent affixation on the facility premises, a permit-to-operate, in accordance with all of the requirements of RSA 146-C:4. For this violation, the Division is seeking a fine of \$100 pursuant to Env-C 607.02(b).

The total fine being sought is \$4,300.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Charles and Joan Alward are required to respond to this notice. Please respond no later than October 28, 2002, using the enclosed form.

1. If Charles and Joan Alward would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Charles and Joan Alward choose to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Charles and Joan Alward wish to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

Charles and Joan Alward are not required to be represented by an attorney. If Charles and Joan Alward choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Charles and Joan Alward committed the violation(s) alleged and that the total amount of the fine sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Charles and Joan Alward committed the violation and that the amount of fine sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, to apply in this case:**

1. The violation was a one-time or non-continuing violation, **and** Charles and Joan Alward did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Charles and Joan Alward did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violations were committed, Charles and Joan Alward were making a good faith effort to comply with the requirement that was violated.
3. Charles and Joan Alward have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case, which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing that has been scheduled is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation and/or that the fine(s) should not be imposed, or that the fine sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you choose to have an informal meeting to discuss the issues, you must contact DES Legal Unit at (603) 271-6072 to request a pre-hearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact DES Legal Unit at (603) 271-6072.

COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2 2002*)

cc: Gretchen Rule, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney
Thomas R. Beaulieu, DES ORCB
Lynn A. Woodard, P.E., DES ORCB